

June 8, 2006

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0500556**

JAMES BORDA
Code Enforcement Appeal

Location: 31022 44th Avenue South

Appellant: **James Borda**
31022 44th Avenue South
Auburn, Washington 98001
Telephone: (253) 653-5744

King County: Department of Development and Environmental Services,
represented by Al Tijerina
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-6653
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal; extend date of compliance
Department's Final Recommendation:	Deny appeal; extend date of compliance
Examiner's Decision:	Deny appeal, extend date of compliance

EXAMINER PROCEEDINGS:

Hearing Opened:	May 25, 2006
Hearing Closed:	May 25, 2006

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS OF FACT:

1. On March 24, 2006, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to James Borda that alleged code violations at property located at 31022 – 44th Avenue South. The Notice and Order cited Mr. Borda and the property with two violations of county code: accumulation of assorted rubbish, salvage and debris (citing particular types of such materials); and accumulation of inoperable vehicles and vehicle parts throughout the exterior premises and parking/storage of vehicles on non-impervious (unimproved) surfaces. Such violations were required to be corrected by May 26, 2006.
2. Mr. Borda filed a timely appeal of the Notice and Order, claiming: that the standards of R-4 zoning were being applied in the Notice and Order, which is not what the property was zoned when he purchased it approximately 15 years ago; that the violations alleged are present throughout the entire neighborhood and the entire neighborhood should be cited for violations; and that the violations alleged are also present on King County-owned property, and therefore the county cannot cite a violation that the county is also performing. (The Appellant also complained at the hearing that the county uses a complaint-driven process in its code enforcement activity, rather than applying the code on an even-handed and comprehensive basis.)
3. The evidence in the record demonstrates that a significant amount of rubbish, salvage and debris is spread in the exterior portions of the property, as well as inoperable vehicles and car parts, and that vehicles are parked on bare grass surfaces rather than the impervious surfaces required by county code as cited by the Notice and Order.
4. Mr. Borda makes no detailed or persuasive assertion that he has a non-conforming use right to conduct the activities which are cited as violations in the Notice and Order. In addition, the Examiner notes that the prohibition of open storage of rubbish, junk, scrap, etc., and the prohibition against storage or parking of wrecked, dismantled or inoperative vehicles or parts thereof in exterior storage unless done in connection with the business of a licensed dismantler or vehicle dealer, are both applied regardless of the zoning of a property. [KCC 21A.32.230 and 23.10.040]
5. The complaints about unfair and inequitable county enforcement, which the Appellant alleges is discriminatory and harassing, are matters of legal equity, over which the Examiner has no jurisdiction (see Conclusion 1), or are matters under DDES administrative authority and responsibility in the conduct its enforcement activities. (The Appellant may wish to communicate with the Executive Branch regarding its enforcement practices.)
6. The Appellant testified that he has been removing some of the offending material from the site, which does seem to be the case, and desires that a period of 60 days be permitted for compliance with the requirements of the Notice and Order, rather than the 30 days desired by DDES due to DDES's conclusion that the Appellant has made little or no progress toward compliance and has been uncommunicative with the county.
7. The Appellant desires to be able to keep an old inoperable tractor on site, which he intends to restore, as well as an antique gas pump. Those would have to be stored in interior storage in order to comply with county code provisions.

8. The preponderance of the evidence in the record supports a finding that the charges of code violation in the Notice and Order are correct.

CONCLUSIONS:

1. The Appellant's argument that it is unfair for the County to engage in code enforcement on the subject property when other properties and entities have similar violations is an equity issue over which the Examiner has no authority. It is tantamount to a claim of *equitable estoppel*, that the county should be barred from enforcing the matters at hand because of unequal or unfair treatment. The Examiner as a quasi-judicial hearing officer is generally limited to adjudicating matters under "black letter" law, *i.e.*, law enacted in statutory or ordinance form. Washington case law limits the Examiner's exercise of common law in deciding cases. [*Chaussee v. Snohomish County*, 38 Wn. App. 630, 638, 689 P.2d 1084 (1984)] Any equity claim would have to be brought in a court of law.
2. As the accumulation of rubbish, salvage and debris on the property and the accumulation of inoperable vehicles and vehicle parts and parking of vehicles on non-impervious surfaces have been conducted on the subject property in violation of county code as cited, those violation charges of the Notice and Order are correct and are sustained on appeal.
3. Since the deadline for compliance in the Notice and Order has been obviated by the time taken on appeal, the Examiner shall impose a new deadline for correction. Although the Examiner understands the desire of DDES to impose a short deadline for compliance given DDES's perspective of the Appellant's lack of effort to comply, the Appellant has offered testimony that he has removed some of the material onsite, and the Examiner concludes that granting the 60 day period requested by the Appellant is a reasonably short but also reasonably accommodative time period for achieving final compliance. The Appellant should be on notice that should compliance not be achieved within the 60 day period, penalties for lack of compliance will pertain.

DECISION:

The appeal is DENIED, except that the Notice and Order deadline for regulatory compliance is revised as stated in the following order.

ORDER:

1. Remove all assorted rubbish, salvage and debris from the premises *by no later than August 8, 2006*, so that the property complies with county code in such respect.
2. Remove all inoperable vehicles and vehicle parts from the premises or store these vehicles and materials within a fully enclosed building, and cease parking/storage of vehicles on non-impervious surfaces, *by no later than August 8, 2006*.
3. No penalties shall be assessed against the Appellant and the property if all the deadlines stated within the above Conditions 1 and 2 above are met. If any of the deadlines is not met, DDES may impose penalties against the Appellant and the property retroactive to the date of this order.

ORDERED this 8th day of June, 2006.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 8th day of June, 2006 via certified mail to the following:

James Borda
31022 – 44th Avenue South
Auburn, Washington 98001

TRANSMITTED this 8th day of June, 2006, to the following parties and interested persons of record:

James Borda
31022 - 44th Ave. S
Auburn WA 98001

Deidre Andrus
DDES/LUSD
MS OAK-DE-0100

DDES, Code Enf. Billing
MS OAK-DE-0100

Patricia Malone
DDES/LUSD
MS OAK-DE-0100

Lamar Reed
DDES/LUSD
MS OAK-DE-0100

Al Tijerina
DDES/Code Enf.
MS OAK-DE-0100

Toya Williams
DDES/BSO
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE MAY 25, 2006, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0500556.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing was Al Tijerina, representing the Department, and the Appellant James Borda.

The following Exhibits were offered and entered into the record:

Exhibit No. 1	DDES staff report for May 25, 2006
Exhibit No. 2	Notice and Order issued March 24, 2006
Exhibit No. 3	Notice and Statement of Appeal received April 10, 2006
Exhibit No. 4	Copies of codes cited in the Notice and Order
Exhibit No. 5	Photographs (color copies lettered A-M) of subject property taken March 24, 2006 (A) and September 9, 2005 (B-M)

PTD:gao
E0500556 RPT